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Family Law



Divorce or dissolution is not the only option available to you when your marriage or civil partnership breaks down. This factsheet sets out the alternatives and the advantages and disadvantages of using them.

In many cases divorce or dissolution (the equivalent to divorce in civil partnerships) will be the most obvious, and most suitable, way of dealing with a marriage or civil partnership breakdown. However it is not for everyone and it is a good idea to consider the alternatives before making any decisions.

Alternative ways of 'ending' the marriage or civil partnership

Nullity

A marriage or civil partnership can be annulled if it is deemed to be either 'void' or 'voidable'. If the marriage or civil partnership is void it will be treated as if it never happened. If it is voidable it is treated as valid until such time as it is annulled by the court.

A marriage or civil partnership can be annulled if:

- Either party is under the age of 16
- The parties are related (i.e. brother and sister, father and daughter etc)
- At the time of the marriage or civil partnership either party was already married or in a civil partnership
- Either party did not consent
- Either party was suffering from a mental disorder
- Either party was suffering from a venereal disease
- The other party was pregnant by another person
- There are certain gender recognition issues

And in the case of marriage only it can be annulled if:

- The parties are not of different genders
- It has not been consummated

The court can still make orders in relation to finances and children if a marriage is annulled.

Unlike divorce or dissolution you do not have to wait a year from the time of the marriage or civil partnership to begin nullity proceedings. You may, however, have to bring your proceedings within a certain time, depending on the basis for the nullity but a solicitor would be able to advise you further.

It can be difficult to show that a marriage should be annulled and unlike divorce

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proceedings, nullity cannot be dealt with solely by correspondence and paperwork. Both parties are required to attend court for a full hearing.

Judicial separation

A petition for judicial separation does not dissolve the marriage but it does allow the court to use its powers to address financial issues. It is usually only used in cases where one of the parties has religious or cultural objections to divorce.

The petition must rely on one of the five facts relied upon in divorce proceedings but the court does not have to consider whether the marriage has irretrievably broken down, as it would in a divorce petition. The five facts to be relied upon are;

- Adultery
- Unreasonable behaviour
- Desertion
- Two years separation and consent
- Five years separation (no need for consent)

Further information about these facts can be found in our free information guide Grounds for Divorce.

You do not have to have been married for a year in order to commence proceedings, unlike divorce.

Although the court is able to make financial orders within judicial separation proceedings the orders it can make are more limited, for example there is no power to make a pension sharing order. Further information can be found on the Financial Issues on Divorce page.

The procedure is very similar to that of divorce and indeed it is possible to turn a judicial separation petition into a divorce petition as long as the parties have been married for at least a year.

If you are in a civil partnership that has broken down, you can apply for a separation order which is very similar to judicial separation and follows a very similar procedure. The main difference is that the fact of adultery is not available.

Dealing with the issues arising from the breakdown

In many cases the breakdown of a relationship will have a knock on effect on the couple's finances and how they care for their children. It is possible to take steps to address those issues before beginning divorce or dissolution proceedings, and even, in some cases, when the couple has no intention of getting a divorce or dissolution of civil partnership at all.

Separation Agreements

A separation agreement is a contractual agreement between two people in a marriage or a civil partnership. It records their agreement to live apart, their obligations to maintain one another and any children, arrangements for those children and the distribution of the couple's assets.

Separation agreements are normally drawn up for people who are planning to get divorced at some point in the future but cannot do so immediately, i.e. if they have not been married for a year or they wish to rely on two or five years separation. In that situation a separation agreement allows people to sort out their financial affairs and arrangements for children while they wait to issue the divorce proceedings. When they do proceed with the divorce, the separation

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agreement can be turned into a consent order which the court will be asked to approve. Further information about this can be found in our free information guide [Divorce or Dissolution and Consent Orders](#).

Failure to maintain applications

It is possible for either party to a marriage or civil partnership to make an application to the court if the other party is not providing financially for the person making the application or for any children. It is therefore possible to obtain a financial order from the court without beginning divorce or dissolution proceedings.

The court can order the spouse to make regular maintenance payments and even limited one off sums of money to reimburse the person making the application for expenses incurred before the application was heard. These applications are, however, geared for maintenance only and do not provide a mechanism for dividing up the capital assets (e.g. houses, savings, investments etc) or pension assets that the couple may have.

Alternatives to using the courts: Counselling and Family Therapy

Some couples, when faced with a relationship breakdown, will try and avoid using the court system at all, instead seeking counselling or family therapy. It is important to remember, however, that while counselling and therapy can help people to deal with emotional issues they cannot legally end the marriage or civil partnership or provide the stability of enforceable financial and children arrangements. A combination of both can be a good way forward.

Counselling or family therapy can help couples who are having problems deal with those problems and salvage their relationships. If the relationship is really over, they can help the whole family to deal with the breakdown and the related issues with as little stress and upset as possible.

Relate is one of the best known relationship counselling organisations (www.relate.org.uk) and your solicitor will also be able to recommend other local counsellors, for either joint, separate or whole family sessions, if you think it would help.

I wish to seek alternatives to divorce. What should I do?

The breakdown of a relationship is a confusing and stressful time. While divorce or dissolution may seem like the only option, and in reality is often the most suitable, there are others and it is worth considering them before making such an important decision.

Fisher Meredith has a team of experienced and sympathetic Family Law solicitors who can help you to find the best way forward in your own personal circumstances.

Useful links

Relate
www.relate.org.uk

The Association of Family Therapy
www.aft.org.uk